

ARBITRATION ADVISORY

1998-02

Required Accommodations for Fee Arbitrations Participants With Disabilities (As Defined by the Americans With Disabilities Act)

March 20, 1998

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INTRODUCTION

This Advisory addresses the issue of whether or not bar associations are required to provide special accommodations for participants in fee arbitrations, including arbitrators, who have disabilities (as defined by the Americans With Disabilities Act¹). Fee arbitration programs are most likely to encounter the following two classes of individuals with disabilities: those with mobility impairments (individuals who use wheelchairs or other mobility aids such as canes, walkers, scooters, etc.), and those who require auxiliary aids and services to ensure effective communication (individuals with visual or hearing impairments).

ANALYSIS

Do bar associations fall within the definition of "public accommodations" (under Title III of the ADA)?

Yes. Bar associations are places of public accommodation and are therefore required to accommodate individuals with disabilities. The only instance in which a business is not required to provide an auxiliary aid or service is if doing so would "fundamentally alter the nature of the goods or services being provided or cause an 'undue burden' for the business. 'Undue burden' is defined as significant difficulty or expense when considered in light of a variety of factors, including the nature and cost of the auxiliary aid or service and the overall financial and other resources of the business."²

1 Full text of the Title (Title III 28 C.F.R. Part 36) and other materials relating to the Americans With Disabilities Act (ADA) may be obtained from the Department of Justice (DOJ) at 1-800-514-0301.

2 Excerpt from the Better Business Bureau's pamphlet entitled "Access Equals Opportunity: Your Guide to the Americans With Disabilities Act."

It is important to understand that overall financial resources include those of the entire bar association, not just the fee arbitration program. As a result, bigger bar associations with revenue and staff are less likely to meet the undue burden standard than are smaller ones, which may be run entirely by volunteers. Unfortunately, there is no magic formula for determining the undue burden standard, and legal precedents are difficult to establish since each situation is different. If you are uncertain as to whether or not accommodations your bar association may be faced with making would cause significant difficulty or expense, it is probably wise to contact the ADA Hotline listed as a resource at the end of this Advisory. If it is determined that you do not meet the undue burden standard on a particular case, but you believe that you do not have the resources to provide the accommodation, or if you have other issues regarding your ability to accommodate one of the participants, we suggest you contact the State Bar's Mandatory Fee Arbitration Program to discuss your options.

What sort of accommodations must be provided?

There appears to be a great deal of latitude in how to accommodate individuals with disabilities, and the means to do so is often best determined by discussing various options with the individuals themselves.

When discussing options with a person with hearing impairments, relatively simple and cost-effective approaches might include: having a friend or relative attend the hearing to interpret, submitting all evidence in writing rather than in person, or arranging for a longer hearing so that communication can be done in writing (this might be best facilitated by providing a laptop computer at the hearing). If none of these options are practical or acceptable, there are auxiliary communication aids and services available. These include (but are not limited to) sign language interpreters, assistive listening devices, and TTY's (text telephones for people who are deaf or hard of hearing).³

When working with a person with visual impairments, solutions might include providing copies of rules, procedures and documents in large print, or actually reading materials onto a cassette. Many individuals with sight impairments have special computers that convert documents into Braille format. If this is the case, rules, procedures and other documents can be provided to them on disk.

³ Information on how to locate certified sign language interpreters or obtain assistive listening devices and TTY's is available through the ADA Hotline referenced below.

When scheduling hearings with an individual who uses a mobility aid, such as a wheelchair, walker, scooter, cane, etc., it is important to ensure that the hearing is scheduled in a location without "architectural barriers," or elements of a facility that prevent or impede access by people with disabilities. These would include curbs and steps, narrow doorways and aisles, restrooms that are too narrow for use by a person who uses a wheelchair, and inaccessible drinking fountains and telephones. If your bar association or the location where the hearing will be held is not wheelchair accessible, you may want to schedule the hearing at another arbitrator's office (if a three-person panel) or other neutral location without such architectural barriers.

If you suspect that an individual with whom you are dealing may have a disability, it is perfectly acceptable to ask them directly. Suggested language might include: "Do you have special needs that require an accommodation?" or, more specifically, "Do you have special needs that require that the hearing be held in an accessible location?", or "Do you have special needs that require materials in an alternate format?", or "Do you have special needs that require an auxiliary aid or service to ensure effective communication?"

CONCLUSION

Experience suggests that most people with disabilities greatly appreciate knowing that you have made an honest effort to accommodate them. If you flat out refuse to do so, your program may run into problems, including an action filed in Federal District Court, or possible intervention by a disability advocacy organization or the Department of Justice. Most program administrators should be able to find a creative and effective means to accommodate individuals with disabilities. If none of the low-cost approaches are acceptable to the client, however, and the program is faced with having to pay for an interpreter⁴, for instance, it may place an undue burden or financial hardship on small programs, which, accordingly, may be exempt. (See discussion above regarding determining "undue burden" standard.)

For specific questions relating to the ADA, and for information on how to locate certified sign language interpreters throughout California, contact the ADA Hotline at (800) 949-4232, e-mail: adatech@pdbtac.com, Web site: <http://www.pacdbtac.org>. Their staff has been extremely responsive and helpful, and has encouraged us to list them as a resource.

⁴ Most qualified sign language interpreters (American Sign Language (ASL)) charge anywhere from \$60 - \$100/hour, including travel time, with a minimum of two hours. This can add up quickly and may place an "undue burden" on smaller programs.